EXHIBIT A

TCI 2 TRANSCRIPT

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW JERSEY

IN RE:	)	Bankruptcy Action
	)	Case No.: 09-13654(JHW)
TCI 2 HOLDINGS, LLC., et al.,	)	Volume I
	)	Chapter 11
Debtors,	)	Camden, New Jersey
	)	March 17, 2009

TRANSCRIPT OF HEARING
BEFORE THE HONORABLE JUDITH H. WIZMUR
UNITED STATES BANKRUPTCY COURT JUDGE

APPEARANCES:

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aren't taking an interest in this case, and are not interested parties, is not correct at all. We intend to be very active in this case, and as we move on in the agenda, and get to items later, I think Your Honor will be aware of what we intend to do in this case. Thank you, Judge.

THE COURT: Thank you. Is there anyone else who wants to be heard, who desires to be heard on the cash collateral arrangements, except for the professional fees to the note holders?

All right. Then, thank you, Mr. Lubertazzi, you have answered my questions. And we're prepared to focus on the --

MR. LUBERTAZZI: Thank you, Your Honor. And just for the record, I didn't say the unsecured creditors weren't important. So to the extent that I inferred that, that was not intentional.

I know that Your Honor set up a briefing schedule. And I believe that Mr. Trump filed his objections. And then Mr. Hansen's clients filed their objections. So depending on how Your Honor wants to proceed.

THE COURT: Yes, I think that I would like to start with the note holders, if I may, because there has been opportunity by Mr. Trump's counsel to reply. And perhaps we should take up the response to the reply.

Let me focus on a couple of matters. You highlighted, counsel, the opportunity of the debtor to exercise

-- or the debtors to exercise their business judgment to enter into what is couched as an agreement for adequate protection of the note holders, i.e., payment of professional fees during the course of the reorganization process.

How do you -- you do acknowledge, do you not, that the O'Brien reference in the objector's reply is correct. That the so-called Business Judgment Rule cannot overcome specific appellate provisions.

MR. HANSEN: Absolutely, Your Honor. There's no question that, to the extent that a debtor exercises his business judgment, it needs to do so within the legal rubric of the Bankruptcy Code and the Bankruptcy Rules, and other applicable law that it stands before in connection with its case.

And we think that the debtor is squarely within those legal precedents. If you look -- the main thrust of the objection from Mr. Trump is that 506(b) really acts as a preclusionary statute, which precludes someone who is an under-secured creditor from obtaining adequate protection.

It's just -- their view is, if you combine that with the decision from the Supreme Court in Timbers and you look at Justice Scalia's writings, therein you see that, if you're under secured, you can't get adequate protection in the form of -- in the form of something that may otherwise be delineated in 506(b).

So that if 506(b) says, you're entitled to interest, fees, costs and other charges, to the extent of your over security, and to the extent that it's provided in your contract, then, therefore, you have a statute that states very clearly what you're entitled to.

And when you look across and you say, well, now you're asking for adequate protection, and one of the forms of adequate protection that you're asking for happens to be delineated in 506(b), and as we stand here today, we don't know whether you're over secured, whether you're under secured, or whether you're unsecured.

And so, therefore, if adequate protection that you've agreed with, with the debtors and with Beal Bank, in the form of this business judgment that the debtors exercised, at arms length negotiations to come up with this agreement, then you simply -- you run afoul of 506(b), and, therefore, you can't do it.

And we can take a step back and we say, hold on a minute, because if the jurisprudence that you're citing for that proposition is Timbers, which it is, you've got to read Timbers and you got to understand what it says.

And Justice Scalia in Timbers started out the discussion by saying, that the U.S. Bank, I'll call them that, it's U.S. Savings and Loan Association of Texas, let's call them U.S. Savings, for purposes of discussion.

What the Court said was, U.S. Savings made about a 4.1 million dollar loan to Inwood on Timbers, and, basically, by the time that Timbers filed for bankruptcy, it was about a 4.4 million dollar loan.

And there was evidence or testimony that the value of the collateral that secured that claim was somewhere between, you know, 3, and 4.2 million dollars.

So it fell somewhere in the range below the total amount. Timbers had a lien, they had an assignment of rents, and they were receiving those rents during the course of the case.

There was also testimony and evidence presented that the collateral value was rising, during the course of the case. Incrementally, but rising.

So you have to look at that factual predicate. And right at the beginning of the case, Justice Scalia says, barring everything else, there's no dispute, and it is black letter law, that if the collateral was diminishing in value, U.S. Savings would be entitled to adequate protection.

But that's not the case. And here there is no testimony, there's actually evidence that the collateral is increasing in value.

And as a result of the testimony that it's increasing in value, we now need to look and see, what's the request that Timbers has made? So Timbers, who's receiving rents is also

asked to receive interest.

Not adequate protection. They asked for interest in the form of adequate protection. And the Court went to great lengths to say, hold on a minute, first of all, we're out really of the concept of 363 and 361, where we're talking about a diminution in value. Okay?

We're away from the diminution in value, and what you need to do to protect, and we're clearly just within the request for interest.

And interest is one of the issues here that says, under 506(b) you're not entitled to it.

THE COURT: Didn't they say -- didn't Justice Scalia say, in the context of 362(d)(1), which specifies, of course, that relief from the stay may be granted if there is lack of adequate protection.

MR. HANSEN: Sure.

THE COURT: Was reading that phrase.

MR. HANSEN: Absolutely.

THE COURT: And he was then looking to 506(b) to say, -- 506(b) says that, an over secured creditor can obtain interest and attorney's fees, and it cannot achieve those things, including particularly interest in the Timbers case, if it is not over secured. That you cannot then impose upon adequate protection under 361, things that are not provided for in 506(b). Isn't that what the Court said?

MR. HANSEN: I would take exception with, you cannot impose as adequate protection things that are in 506(b).

THE COURT: I mean, there's no question that the Court stated unequivocally that adequate protection is available to an under secured creditor whose collateral is diminishing in value. That statement is clear.

There are a couple of questions to be asked right up front here, to understand how this situation applies to that statement.

Number one, what is the acknowledgment of the ad hoc committee, in terms of its status? Do they say, we don't know, we could be over secured, we could be under secured, we could be wholly -- what is the position of the committee?

MR. HANSEN: Well, Your Honor, let's look at the capital structure of the company. Beal has a first lien, about 488 million dollars of first lien debt on the company.

The note holders have 1.25 billion in notes that come behind that. And then behind that are assuming that they are secured, you have your unsecured creditor body, which we heard testimony a couple of weeks ago was somewhere in the nature, it could be around 30 million dollars.

And then behind that you might have limited partnership interests, and behind that you might have equity.

So in the range of value, and we don't have any witnesses here today, the debtor hasn't brought any witnesses,

and nor, to our knowledge, has Mr. Trump. So there's not going to be anybody to take the stand and provide testimony to say, what is the value that we have to establish right now to determine who's secured and who's unsecured.

One thing that we feel incredibly certain of, is that we are not unsecured. Are we over secured, as we stand here today? I think that's a pretty tough argument to make, Your Honor, if you think about 1.75 billion dollars of value. If we were over secured, because there was that much value, you would assume that the debtor would have been able to make its interest payment to us in December, rather than not make it, file for bankruptcy, and utilize that 53 million dollars, in large measure, to run these proceedings.

So I think that you're probably in the world of under security. But, again, we have no testimony at that point. But to be, you know, honest with Your Honor, we don't really feel that we're unsecured. But of course Mr. Trump makes the allegation that, they're probably unsecured, maybe under secured, but probably unsecured.

You know, and if that's true, then Mr. Trump also needs to be objecting to Beal, if you apply the same 506(b) logic, which is, if we're unsecured, then that means Beal is also similarly impaired, and cannot receive under 506(b), not only fees, but also interest, which is being paid at the default rate.

So you have to take a step back, and you have to say, okay, if we are in the case law and we're in the statutes, and the Court is clear that, where there is a diminution in value that might occur, you can grant adequate protection.

You have to look at the thousands and thousands of cases that pass through bankruptcy in the kind of complex Chapter 11 process, every time we come.

Cash collateral orders and DIP financing orders that include a provision for the use of cash collateral, often provide for, before there's been any determination by a witness that takes the stand and provides testimony at the inception of the case, what the relative values of everything is, the debtor says I acknowledge that you have these liens, and I acknowledge that you have this debt, and we're going to provide for adequate protection to you, because we anticipate that your collateral will diminish in value.

And the way we protect everybody else in the estate, is to provide reasonable claw back provisions in the document, which says if you get to a point in the case where you have testimony, where you are unsecured, under secured, or whatever that might be, we'll either apply it to your principal, or it can be disgorged.

But to --

THE COURT: Well let me -- indeed there is provision that, if the note holders are wholly unsecured, that there

would be disgorgement. The provision regarding claw back otherwise, offers an opportunity, an option to apply to principal, it doesn't mandate it, does it?

MR. HANSEN: No, Your Honor, it wouldn't be mandated, because it's -- I guess, you have to step back and you say, how do these cases -- how do these things usually go? Do you want to walk in is -- the debtor, in its business judgment says, do I want to walk into Court, putting a witness on, having note holders put a witness on, having Mr. Trump put a witness on and have a valuation fight on day one in the case, and spend the number of weeks that will be necessary to take the discovery, because everybody will have to depose each other's expert.

The management of the company will have to be deposed, and their projections, everyone will have to look into, trading multiples and everything else, with which to come up with value.

Do we want to enter the case in that fashion, fighting on all fronts, so that we can then determine where we're going to be, so that when we get to the -- at that point we can say, well, you're not entitled to get paid, and you are.

No. The debtor made the choice here to say, I'm going to negotiate with my major creditors in this case -- and we have to, it bears, and I'm going to remark on it in a few minutes -- we have to actually look at Mr. Trump's status in the case, when we get to there.

But I just want to mention that, and we'll get to that in a sec. Is that the debtor makes that choice. And it says, we're going to come in and we're going to ask for this approval. Rather than walk into this case with a trial, in the first month of the case, to have a full blown trial and a hearing on valuation. The claw back provisions, to get back to your question, when you say those are optional.

Because as you move through the case, as we all know, most often as you migrate through the end of the case, there's a deal that gets cut, and a plan gets proposed, and the Court approves the plan and everybody leaves.

And in the context of that, to say, if there's a finding today that you're under secured by X, Y or Z, and it's not technically under secured by X, Y, or Z, it's also the level of diminishment from the starting point to the finish point, because the adequate protection is supposed to provide for, in essence, that depreciation in value.

And so if you say, well, you've been paid a million dollars in fees over the course of a year, and your collateral diminished by 3 million dollars, okay, then can you be clawed back?

I don't know, that's a question for the Court to answer. But if you're still secured at the end of the day and you've had that situation, then maybe you can't. So it becomes very difficult to establish that, here and now, at the

inception of the case.

Now Mr. Trump makes the point in his papers, look, there's, you know, it's up to the note holders, they have to make the motion under 362(d)(1) to say, look, we want to lift the stay, and if you're going to reject that, it needs to be conditioned upon the provision of appropriate adequate protection, it's our burden, we have to put witnesses on, we have to go through that whole trial, it's our hearing, etcetera.

We're perfectly fine to adjourn today's hearing, or continue today's hearing for another month. Go out, take the discovery that's necessary, come back here and have everybody put their witnesses on, and have that for you, so that you have the factual record to satisfy the questions that you're raising Judge.

We on the note holder side, and I believe the debtor, they can speak for themselves, and I believe Beal Bank, as well, we all made the conscious decision not to do that. We negotiated before we came in here to come up with a form of adequate protection that we believed was fair.

Now Mr. Trump says, well, no, you're not, you're just saying you want your fees paid. And that's -- you didn't come up with some contract for adequate protection.

Well that's not true. What we said was, living within the law, which if you go to 363(e), for example, it says

if you're going to -- it's not only 362, I think that's another confusion, that's where Timbers is. But if you go to 363(e), it says, if you're going use somebody's collateral, that use is going to be conditioned upon the provision of adequate protection.

And then you go to 361, and 361 says, sure adequate protection's available for diminution of value.

THE COURT: How do you correlate the amount of professional fees, the fact that the payment professional fees with the -- any prospective diminution of value? Your formula contemplates doing that after the fact, and adjusting backwards by way of claw back or disgorgement, to accommodate one with the other.

At this point, what correlation is there to any adequate protection situation?

MR. HANSEN: It's a correlation of convenience, Your Honor. It's -- as every -- you know, what correlation is there to diminution in value to Beal's default interest in their fees.

I mean, it's a correlation of convenience. The parties get together and they say, how do we come up with an appropriate adequate protection package. And we say, well, it's pretty clear that month, after month, after month, the revenues in Atlantic City have been declining, and declining, and declining.

And in February, they were down 19.2 percent on the whole of Atlantic City, I can't remember the number specifically for the Trump assets, but they've been either correlative, or out in front of those.

And we say, okay, if we're sitting here today and we'd rather not go through the process of saying, let's get an expert, let's figure out what we think the collateral value's going to come down to, and let's fashion the exact amount of adequate protection to correlate to that.

It's pretty much similar to almost every case that passes through bankruptcy at the inception with a DIP or a cash collateral. People say, well, what can we do to adequately protect you?

We can provide you with periodic cash payments, we can provide you with replacement liens, we can provide you with super priority claims. And we can do anything else, essentially, that, you know, we feel is appropriate, because the Code says it's a non exhausted list of factors. And so we sit down as a group and Beal says, I'd like to get interest and I'd like to get it at the default rate.

And I'd like to get my fees paid, and I'd like to have, in addition to that, replacement liens, and super priority claims, and all the rest of that.

And we say, we'd sure like to get our interest paid, too, and we sure would like to get our fees paid, and we'd like

to get super priority claims and liens, too, but we recognize that you didn't pay us the interest payment, because you couldn't, you needed the money in the business.

So as part of the compromise, keep the money in the business, keep it running, and out of convenience, we'll use the legal fees as a proxy, and we'll provide protection for that via the claw back provisions. It's -- they're -- I can -- I can't really think of a case that I've been involved in where we've had either where I was on the debtor's side, where I was a note holder side, where I was equity side, or where I was on an official committee side, where we actually sat down at the inception of the case and kind of timed out the approximation, the diminution, and everybody's collateral, and tried to tie them back to a specific number.

Generally what you do, in the arms length negotiations, is everybody sits down and says, this is kind of the way we have to solve for this, and the way we protect everyone, is to put the claw backs back in.

And when you look back, oftentimes you do have a official committee. And an official committee participates in that process, and they say, okay, you know, now we've had time to look at this and, you know, I would say the vast majority of the times, the committee agrees, and they think that it's appropriate, too. Because if we're unsecured, in Mr. Trump's world, or, you know, and Beal might be impaired, or could be on

the cusp of being impaired, okay, and, granted, we have slightly different form of collateral between the two parties, you know, Beal has a lien on everything, we have a lien essentially on the real estate assets and the fixtures and things that are pertinent thereto, and we also have an assignment of rents.

So there are different collateral packages. But if you start to talk about unsecurity in the bonds, you know, you're talking about, well, what else is there left for anybody else in the case. And so, you know, when you get into that range, when you're standing there saying okay, who is Mr. Trump let's talk about him for a second.

He was just prior to the bankruptcy filing, the chairman of the board of directors of the company. He was just prior to the filing a limited partner in the partnership entity that's a debtor before you, which is in the middle of the corporate structure. He was a shareholder at the public company level, and he was a contract counter party in at least two contracts.

Prior to the bankruptcy filing, he resigned as chairman of the board, he abandoned his partnership interests in the partnership, and the contracts, they're, as far as we know, have not been noticed to the debtors that they are in any form of default or non-payment.

THE COURT: Do you contend that there is no standing

to assert an objection to this arrangement by Mr. Trump?

MR. HANSEN: Your Honor, I think it's questionable, at this point, whether he has standing to assert this objection. I think that the word party in interest in the Code is designed to be broad and inclusive, and I think the debate before you today is a healthy one.

But I want the Court to be -- recognize that the committee views the objection with a healthy dose of skepticism.

Mr. Trump was very public in his resignations and his abandonment of his partnership interests. And the public statements that he made to many places, including television shows and newspapers were, that his interests in the case were worth significantly less than one percent of his total net worth, and that he made an offer to buy the company, but the bond holders rejected him.

And so --

THE COURT: But you do understand that if a shareholder with a single share comes forward --

MR. HANSEN: Oh, under -- no, understood, Your Honor. No, my argument -- what my argument is saying to Your Honor is, you have to be a little skeptical of the argument of why Mr. Trump is pinpointing to the bond holders and saying, well their adequate protection is the straw that breaks the camel's back in this case.

And their adequate protection is untoward, and illegal, and shouldn't be granted.

THE COURT: I'm not sure I could begin to embark on motivations on the part of anyone --

MR. HANSEN: It's for leverage, Your Honor. It's obvious. I mean, everybody in every case tries to jockey for leverage. But I guess the question that we're saying is, you can't be as sanctimonious as saying that, they may be unsecured, and, therefore, they're not entitled to this. But, by the way, you know, Beal Bank's fine.

And so if the bond holders are unsecured, it's fine. We'll make the 506(b) argument against the note holders, but we're not going to make the 506(b) argument against anybody else.

THE COURT: You keep referring to the argument of Trump, and, indeed, it's perhaps mentioned here or there that the note holders might even be totally wholly unsecured. But the thrust of the argument, is it not, is there most probably under secured, and, therefore, not entitled in the first instance under 506(b) to payment of attorney's fees, at least up front.

MR. HANSEN: Well, Your Honor, I think, if the language in the briefs that they've submitted has said unsecured and possibly under secured. I think they've said more likely unsecured and possibly under secured. I don't have

the brief in front of me, but I think that was the language.

Either way, yes, the argument that they're making is, either way you slice it, 506(b) stands as a prohibition on receiving attorney's fees. And we say, wait a minute, if that's based purely on Timbers and the reading of 506(b) and 361, you got it wrong. Timber says you can fashion adequate protection for the diminution in value, hands down. Whether you're under secured or over secured. And if we're --

THE COURT: There -- excuse me for interrupting. The agreement provides for replacement liens and super priority administrative claim on behalf of the note holders for the diminution in value, any prospective diminution, does it not?

MR. HANSEN: That's one of the components of the order, yes, Your Honor.

THE COURT: Would that not offer, by itself, adequate protection, and precisely so directed at reflecting the -- any potential lawsuits?

MR. HANSEN: We don't believe so, Your Honor, because, again, we're behind Beal. Beal's getting paid interest at the default rate plus all of their fees, and we're sitting behind them. So it is a replacement lien. But to the extent that it's adequately protecting us, we don't feel that it is protecting us.

We feel that, if as the collateral diminishes, which is in large measure going to be a diminishment, in some

respect, as payment of all of this amount to Beal, that we look at it and we say, well, it's not enough, from our perspective, of adequate protection to protect us for the diminution in value.

And that that's the position that the note holders have.

THE COURT: What impact is it that the note holders did not hold a secured position regarding cash collateral?

MR. HANSEN: Well, Your Honor, the note holders have an assignment of rents. It's debatable whether that is a lien on cash. So I think that that's a debatable issue. But I would say, yeah, I mean, Beal has a lien on the debtor's cash collateral. And the note holders -- as we say we have an assignment of rents.

So I don't think that that is material with respect to 363(e), saying, if you're going to use our collateral, which they clearly are, we have a lien on the buildings, we have a lien on the properties, we have a lien on everything that's in them.

We have liens on these things, and they're using them. So if they're using them, they need to condition that use on our adequate protection.

So our view is, it would be better if we had a lien on cash. I would be lying to you if I said that it wouldn't be nice if I had a lien on cash. But I think helpful to this

argument, and that's for the case, generally. I think helpful to this argument, it's somewhat helpful, but I don't thing it's preclusive in anyway for the provision of adequate protection, in a cash form.

Again, we were collecting interest semi-annually throughout the case. We have liens on these properties. These properties generate cash. But these properties are also worth something. And these properties are being used. And, in essence, if they're going to be using our property, the Code's pretty clear, that it needs to be conditioned on adequate protection.

THE COURT: And what about the argument that the arrangements with Beal actually enhanced the value of your collateral? Your shared collateral, if you will.

MR. HANSEN: I'm still trying to figure that one out, Judge. The arrangements with Beal and with us, enhance the value of the collateral, because neither one of us are foreclosing on our collateral. So we've all agreed to enter into a cash collateral order.

I will tell you, Your Honor, if the debtor had come to us pre-petition and said, we're not going to give you adequate protection. Maybe we'll give you a replacement lien, but we're not going to give you any adequate protection.

We would have probably, and we have an inter creditor agreement with Beal, so we need to work through that, and, you

know, Beal and the note holders stand arm-in-arm on these points, as we stand here today.

And I don't mean to sound like I'm picking on them, in any fashion, I'm just pointing out that there's the economy.

So if we knew that the debtors, which they haven't, were going to say, look, we're not adequately protecting you, we would have objected to the cash collateral, or we would have tried to. And we would have asked for a lot of different things.

And we probably would have come in and said, look, within the confines of our inter creditor, which lets us act as unsecured creditors, to the extent that we have a component that's in that fashion, and maybe there are other components in the inter creditor that would let us do that, we probably would have objected. And we would have -- this would have been a very different hearing.

So I think the argument that, the arrangements with Beal enhance the value of the collateral, works for both of us. The arrangements with us enhance the value of the collateral. And let's take a look at that for a sec.

Because we had an agreement, you talk about the genesis of how we got here, and the genesis of the deal, the interest payment was missed in early December, the bonds formed shortly thereafter.

They hired Stroock, and they hired Houlihan, Lokey.

We then reached out to the company and said, we've been engaged and the company's professionals said, we'd like to work with you to try and find a way to, you know, get a deal here, for lack of a getter term.

And we've been working with them. We entered into four forbearance agreements, our clients signed confidentiality agreements, so that they could get information that was non-public, which was then later released. And we worked very hard with the company. We also worked with Mr. Trump.

We met with him a number to times. And his professionals. And we kept trying, and we continue to try to date. And when you talk about hurting the value of the assets and hurting the value of that, one of the ways that you can hurt the value of the assets is to have the case turn into essentially a very litigious process, right at the beginning, as you make a transition from pre-bankruptcy into bankruptcy.

We heard Mr. Burke testify on the critical vendor side, it's a hospitality business, and it's a very high profile hospitality business.

And there are reporters in the Court every time we're here. And everybody reports on these things. So if you wind up with a lot of litigation, right at the inception in the case, over a lot of different things, that's going to hurt the value of the business, or could potentially wind up hurting the value of the business.

THE COURT: I can certainly agree that agreement and resolution is far preferable to intense litigation. How do you respond to the issue of the status of the ad hoc committee? I did see the 2019 statement that was filed, perhaps this morning.

MR. HANSEN: This morning, Your Honor.

THE COURT: Indicating, I think, that the committee represents 74 percent of the note holders as a class. Even so, an argument is made that it is ad hoc, after all. The Code provides a mechanism for binding a class, the formation of a formal committee. The formal professional's retained, in the way that the Code prescribes. This is not that, and it is a opportunity, even for 74 percent -- this is not a situation where the class comes in with a clear arranged agreement for reorganization, and can commit that class, by its numbers, to vote in favor of prepackaged plan, let's say.

This is a case where that negotiating by that ad hoc committee seeks to negotiate on behalf of the entire class, and to bind where it cannot yet before voting the entire class, how do you deal with that?

MR. HANSEN: A couple of things, Your Honor. There is -- there clearly are precedents for this, there have been other cash collateral orders, including those in this case, which differ a little factually.

Where ad hoc committees have been provided with

adequate protection, beyond interest paid to the whole class, professional fees paid to the professionals who represented those individual committees.

But here, 74 percent's a significant number, it's 925.76 million dollars of the total billion and a quarter. And it is past the thresholds for the two-thirds in dollar amount, certainly, with which that class could vote to approve a plan. They have been negotiating as a group since early December.

We have had no turnover in the membership in the group since that point in time. And, you know, we entered into, as I said, four forbearance agreements with this percentage of holders, which as the company announced in it's AK's, was over 70 percent, which it was.

And I think the view here is that, you have a indentured trustee who represents everybody. And their professional fees are being paid in connection with the order, as well. The indentured trustee, as often is the case in these types of situations, is not the party who's out negotiating the terms of arrangements with the debtors.

When we called the debtors in early December, one of the things we said was, we'd like you to pay for the professionals. And they said, we will. And they signed an engagement letter. We have one with the debtors.

As we move through that process, and where we are now, we're still trying to work very hard with the debtors. We

sent them a term sheet last week.

They called us back and said, okay, thank you for sending that. We have some questions, we have some thoughts, we have some comments, but we're pleased that you sent it to us.

We're continuing to work with them. And we'd like to continue to work with Mr. Trump, and Beal Bank, too. We flew down to Dallas, Texas a couple of weeks ago to meet with Beal Bank to try and continue to push this process. So I think that at 74 percent, you're over the two thirds threshold. You are, clearly, the actions that those parties are taking, will have a benefit for the full class. They can certainly bind the full class, because, you know, again, 74 percent, even if it was -- if it was 34 percent, they'd have the ability to block whatever anybody else was doing.

At 74 percent, they have within the class -- at 74 percent they have the ability to bind that class.

And so I understand your concern. And the concern, I think, is probably taken up a level, you know, what Mr. Trump says, well what happens if people trade out of their positions, and you find out, you know, next week you file a 2019, and you represent, you know, 28 percent of the bonds, or whatever the number might be.

Fifty percent, whatever it is, at that point, should you expect that, you know, you're still going to get paid in a

final order all of these adequate protection fees. And that's the way it would go.

And, you know, speaking fairly, if I was on the debtor's side, no, I would want to condition that. I would say, well, wait a minute, if your membership has dropped so tremendously, that you guys are really an ad hoc committee that really it doesn't even represent a blocking position, or it doesn't even represent a material amount of your class, then I think that, as a debtor, they'd want to revisit the issue of whether or not as adequate protection they wanted to pay those fees.

But, realistically, here, this group has stuck together for the past number of months, and I think it's hard for -- and we, as a firm, obviously, have an obligation to file subsequent 2019's, to the extent that the membership changes.

We have an obligation to do that, and we take that seriously. And we will. But I think, as we stand here today before you, that 74 percent of the class, they can bind the whole class of notes, at their size, when they get to voting in a plan.

They are the block that has been negotiating this case for the past 3 months, probably more, almost 4 months now.

And they really are intent on continuing to do so. And the question of, are you helping the bond class by approving adequate protection to them in the form of paying

their professionals to promote a way to get to a deal in the case? Or are you hurting them by taking it away and having, in essence, that 74 percent front the fees themselves, where they're probably going to act, you know, in perhaps a more self interested fashion.

Which one do you go? And I think that's a judgment call. And I think, when we look at it, we believe from the bond holder's perspective, again, that there's precedent for it. Now when you look back in the past case, I agree, there were pre-pack issues and pre-arranged issues, and there were questions, but there were two ad hoc committees.

There was, I guess the TAC committee and the TCH committee, and they both asked for that relief, and they were both provided for it.

And Mr. Trump says, well, that was because at the outset of that case everybody thought they were over secured, so it was fine, you didn't run afoul of anything. Well, in fact, they weren't over secured. And you, Your Honor, raised those points at the beginning of -- you raised them both at the interim hearing and the final hearing.

And I think at the interim hearing, you recognized that when you have a group, and, clearly, the TCH group and the TAC group were not a hundred percent of either one of either one of those classes.

I can't remember the specific percentages that they

were, but they were clearly smaller than the full class.

THE COURT: The number that you cited in your brief, 34 percent, surprised me. Because that didn't comport with my memory at all. But -- and I don't know if you've picked a point in the process that was at its lowest. I don't know. I don't argue with it, because I don't have any facts to refute it.

MR. HANSEN: My colleague says it was the first 2019 that was filed in the case on behalf of the note holders.

THE COURT: But it's changed I guess, at --

MR. GILAD: That may very well have proven to be the case. But that's where the number's based off of.

MR. HANSEN: So, again, Your Honor, I come back to it, and I say, so, there is precedent, even in the prior Trump case for this. And there are precedents in others. I mean, I'm involved in a number of cases in Delaware right now, where you have ad hoc committees that are receiving adequate protection in the form of the payment of their professional fees.

No hearing --

THE COURT: I love that argument best. It's done elsewhere, so therefore --

MR. HANSEN: No, I know, it's -- I'm happy -- Your Honor, I'm happy, actually, again, if we were going to have a full blown evidentiary hearing, I'd actually, I'd, you know, we

could submit all the orders from those cases signed by the judge, demonstrate them as a precedent, etcetera. And perhaps that's something that you would like.

But we can do that, those are a number of different courts in Delaware that we're currently involved in. So I think, though, when you step back, you have to say, how have you guys together, the debtors, and Beal, and you narrowly tailored this, so that people don't get hurt? Because that is Mr. Trump, I mean, he makes the argument, but it's clearly unsecured creditors as a whole.

It could be the former shareholders, it could be other parties, and they also, in a letter, have raised, you know, that they disagree with the payment of these fees on behalf of the ad hocs.

And, you know, the narrow tailoring of the order, it does include pretty aggressive claw back provisions, Your Honor. I would say that these are more aggressive than I'm usually inclined to agree to. But we agreed to them, because, again, it was an arms length that was a give and take process that brought us here.

And I think that they do -- Mr. Trump says, look, why should I have to, at the end of the case, come back and make an application to take away your fees?

Why shouldn't we just not pay them to you, and at the end of the case, you make an application to get them paid to

you, because that's, you know, an easier way to calculate it. And you kind of referred to that earlier.

And our view is, look, that's just not the way we do it in these cases. We understand that there could be a ruling from the Court that says otherwise, but the vast majority of precedent for these cases says, you don't do it that way.

You start out form the premise that, you are potentially secured here, so is Beal, we're going to provide you guys with adequate protection payments.

Everybody has a right to claw those back in pretty aggressive and hard core claw back provisions. And if you get to the end of the case, where nobody has come together for an agreement on a plan, and you guys all haven't, you know, kind of locked up and gotten yourselves out of bankruptcy where no one's objecting, if people raise objections, you have the ability to have that, not only apply to principal, potentially disgorged.

I'm representing the official creditors committee in Tropicana, and we did that at the inception of the case, with respect to the secured banks there, as well.

I'm happy to answer any other questions you have, Your Honor. But I think we briefed these a lot.

THE COURT: Indeed.

MR. HANSEN: So I don't need to go through all the points with you. You've got a lot of information. I'd just

happily ask you if I could have a moment at the end, perhaps if you have any other questions, to make sure that I'd answer those for you. Thank you, Your Honor.

THE COURT: Thank you, sir. Counsel for Mr. Trump?

MR. FRIEDMAN: Your Honor, good morning. David Friedman, Kasowitz, Benson, Torres & Friedman.

MR. MAINARDI: Your Honor, Paul Mainardi of Brown, Connery law firm. Good morning. I just wanted to introduce Mr. Friedman, who has been admitted pro hac vice in this matter, by order of the Court.

THE COURT: Thank you.

MR. MAINARDI: He will present the argument.

MR. FRIEDMAN: Your Honor, can I keep a bottle of water handy?

THE COURT: Of course.

MR. FRIEDMAN: Thank you. Well, Your Honor, as you clearly are familiar with our papers, and we do make a number of arguments, but I think we all, on our side, think that Section 506(b) really is the showstopper.

And I would take a step back, before I get into the text of Section 506(b). The Bankruptcy Code, and I'm -- I regret that I'm old enough to recall the enactment of the Bankruptcy Code. Its creation, among other things, established a fairly regulated system for paying attorneys in bankruptcy.

It happened to be that, under the Bankruptcy Act,

there were horror stories of how fees were abused in bankruptcy, and Congress really made a real effort to come up with a comprehensive structure for the means by which one could obtain the payment of professional fees from a bankruptcy estate.

And, really, for purposes of what we deal with generally in Chapter 11, there's really 3 ways to do it. There's Section 330, which deals with estate professionals. There's section 503(b)(3) and (b)(4), which ultimately I think is where Mr. Hansen's clients belong.

Which is at the end of the case, if you've acted on behalf of a group and you can show that you've made a substantial contribution, you're free to apply and be paid on that basis.

And that, finally, there's a carve out for secured creditors, who can get paid under 506(b). And as far as I know, for all practical purposes, that's really it. I mean, there may be isolated other circumstances, but in the day-to-day world of Chapter 11, those are really the ways that professionals get paid.

And I think we all agree that for today, Section 330 and Section 503(b) don't apply. Really it's a 506(b) issue. And I think you heard Mr. Hansen say that he is -- he says he's not unsecured, and I don't think that matters at all today.

I think he does concede that he's under secured, and

that's all we need to do for today. I mean, it just doesn't matter whether he's under secured or unsecured. And so we really start first with the case, I think we both agreed applies, which is the Timbers case.

And Timbers was a case where, I think, you know, very simply, an under secured creditor argues that section 506(b), that those are not words of limitation.

That Section 506(b) is simply one thing that a secured creditor can have in its basket of rights in connection with getting adequate protection. The language that the Supreme Court used, I'll just read it briefly.

"Petitioner seeks to avoid this conclusion by characterizing Section 506(b) as merely an alternative method for compensating over secured creditors, which does not imply that no compensation is available to under secured creditors. This theory of duplicate protection for over secured creditors is implausible, even in the abstract, but even more so in light of the historical principles of bankruptcy law."

THE COURT: Well what do you make of the 363(e) argument that the collateral of the note holders is being used, and that they're entitled to adequate protection, adequate protection, by their assessment, a very flexible concept, we understand that it is, and could take the form, especially at the outset, by agreement with the debtors, to shortcut these difficult issues, the form that's proposed. Payment of

professional fees.

MR. FRIEDMAN: Well there's two answers to that. The first of which is, I think Timbers makes clear that you don't get through adequate protection what you can't get under the statute. Adequate protection is flexible, and I think we all agree it can take many forms.

But what it can't take is something which violates the Bankruptcy Code. And Timbers is not the only court that says that. But I think there's some other cases, which I'll discuss, which say that as well.

So I think you know under adequate protection generally, you can get a number of forms of compensation, but you can't get something which the Code otherwise prohibits.

Now on top of that, I think Section 363 is important here. Because that is the section that they are speaking about, Section 363.

If you look at adequate protection, and the way it's constructed in the Bankruptcy Code, Section 361 defines it, and then 362 -- it's dealt with only in 4 sections of the Bankruptcy Code, the term adequate protection.

It's defined in Section 361. 362 raises it as a defense to a motion to lift the stay. Section 363 allows the Court to condition, use, sale, or lease a property on providing adequate protection.

And 364 provides that you have a right to get it, if

you're primed. Okay. The only section that could be applicable today is Section 363. What's important about Section 363, is that the protection that they want is protection for a speculated market value decline of this property that could occur at some point in the future.

Which, again, I'm sorry to say, is backwards. Because nobody, you know, the notion that collateral can always, you know, that collateral's subject to decline, is something that we prove in hindsight, we don't prove it in foresight.

Because all collateral, of any kind, is subject to decline.

THE COURT: Of course. But of course adequate protection arrangements can be established in the beginning, and most all decline, do they not, or the actual decline, or increasing.

MR. FRIEDMAN: When they're established in the beginning, they're established in a non-compensatory manner. In other words, you give somebody, as you said, a replacement lien.

You give somebody a super priority claim. So down the road, they have a place mark, so if down the road there is decline, there is a remedy for them. But if you pay them money, if you actually write a check for them every month, that has to correlate to something.

It's not a correlation of convenience. I mean, paying money is different than giving somebody a replacement lien. But more importantly, Section 363, and this is in a number of cases, I think most notably in Judge Balick's decision in Continental Airlines when she confirmed the plan in 1993. Section 363 provides adequate protection for the use, sale, or lease of property.

That, by definition, has nothing to do with market value decline. Market value decline is something that you suffer if you are not allowed to lift the stay, take back your collateral and sell it to somebody else.

Okay. Use, sale or lease of property. I'll give you an example. I mean, cash collateral is the obvious example. Whenever you use cash collateral, by definition, arithmetically you're causing it to diminish. If you don't give someone a replacement lien, he's out of luck.

If you have a piece of equipment that can be used, you know, 20 times. It has a useful life of 20, whatever it does. Okay. If you use it 5 times you've now taken away 25 percent of its useful life. So the use causes a decline. Okay. There is no loss caused by the use of a hotel.

The debtor's use of these hotels, frankly, and this is my point, it enhances the value. Let's consider the two options here. Use the hotels, don't use the hotels.

Okay. Don't use the hotels, means you turn off the

lights. You send the employees home, and you tell the customers to go down the street to someplace else.

You use it, that means that you pay the employees, you pay the vendors, you bring in the provisions, you open up the restaurant, you open up the casinos. Now in that context, how does the use of the casino possibly provide a risk of collateral decline?

It's the exact opposite. The use of the collateral is what enhances and preserves, not only the use of it, by paying insurance, paying maintenance, I mean, all that stuff.

THE COURT: It seems the argument is the broader picture. If the note holders were permitted to foreclose, to achieve the value of their collateral as of the date of the petition, that they would receive X amount in exchange for their position.

That if, because of the market forces, and the dire economic straits Atlantic City, let's say, finds itself in on commercial real estate numbers, or the like, that there would be a diminution in that value six months from now or a year from now.

MR. FRIEDMAN: That is a highly technical evidentiary issue, that is not appropriate for a stipulation on the first day.

I mean, that is -- we're now talking about, you know, (a) trying to predict the future, which I think inherently is

impossible. I think that's why, typically, somebody will make a motion for adequate protection, and then, you know, have that motion heard sometime, you know, a month or two months later, and then take a snap -- take a look back at what's happened since the motion has been made.

I mean, the argument that your collateral is at risk of decline, I mean, let's face it, would you rather hold, you know, the Dow at 14,000 when it was high, or hold it at 6,000 now.

I mean, it may still go lower, but it's got a less -- lot less lower to go right now than it had 2 years ago. The -- but the issue is -- it's not -- when you start paying money to someone, as opposed to the normal form of adequate protection, which is a replacement lien or a super priority, when you start paying money, what you're doing is, you're doing something which requires an evidentiary support.

Again, all of this presumes that you can do it at all, which we don't think you can. I mean, all this presumes that you can call legal fees adequate protection, which I think the law is pretty clear you can't. But if you could, if you could call this adequate protection, you have to take this money and correlate it to something.

You can't just say, well, we all got together and agreed upon it. Because let's talk about who's agreeing to it. I mean the debtor's agreeing to it, you know, because they're

about to go into bankruptcy, they want a soft landing in bankruptcy, and they're not in a position to start creating these types of issues. It's ultimately the judge's provenance to save the debtor from itself when it's trying to keep its ducks in a row on the first day.

Beal Bank has an inter creditor agreement with the note holders. It can't oppose their adequate protection, reciprocally, by the way, both sides.

So, you know, all that arms length stuff that Mr. Hansen talked about, ultimately it's, you know, in the heat of trying to get into Court, people slip things in, and it's sometimes the path of least resistance.

It's not an excuse for violating the law. And, ultimately, that's where Your Honor steps in and says, okay, we understand why you did it, but this is not a extra judicial process.

This is a process which ultimately the Court has to be satisfied that this is legal, it's appropriate. That there is some benefit to the estate, you know. I mean, I'm jumping all over the place here, but, you know, we haven't even talked about benefit to the estate yet.

I think that, you know, it's important to, you know, just I would point out, you know, Timbers, I think, I really think it is the important case, and it's a classic Scalia opinion, insofar as it really, I mean, Judge Scalia is

particularly hostile to attempts to look at the Bankruptcy Code beyond its plain meaning. And I think he correctly looked at 506(b) as -- and said, you know, if 506(b) was an option, was something for creditors to consider, but if they didn't like it, they could always go to Section 361 to get something different.

I mean, then Congress is just -- it's wasting its time writing the Bankruptcy Code. I mean, we might as well just call it, go back to the old days where it was it was a quarterback goody, and, you know, people just did what was fair.

And you know the very same phrase that -- and Your Honor pointed this out earlier, the very same phrase that Justice Scalia found to be words of limitation that did not permit a secured creditor in the form of adequate protection to get post petition interest, that very same phrase is a phrase that permits the payment of fees.

And so, you know, if 506(b) is a statute that does not permit, under the guise of adequate protection, a creditor to get post petition interest, afore-certiorari doesn't permit a creditor to get post-petition fees.

Another way of saying it, is that 506(b) is not just one way. 506(b) is not one way for a secured creditor to get fees. It's not one way, it is the only way.

And I think that is what Timbers says. Now, you

know, I would direct the Court also to the Nair decision, which is, you know, far from the Supreme Court in it's importance. But it was decided in 2004 in the Southern District of Texas. And the Court there says something, which I think was important, and, frankly, probably should have been said sooner.

There the question was, can you get -- can a secured creditor, I mean, this was a case where, and I'll get into a little bit more detail, but that was a case where a lawyer for a secured creditor was being sanctioned for trying to slip in a provision for the payment of fees, while his client was under secured.

The Court said, that when a secured creditor asks for the payment of fees, what he's really asking for ultimately is the payment of an administrative claim. Respectfully saying, look, I want to get paid something from the estate, which is all payments from the estate post petition are administrative expenses.

What the Court said, is that, that is the only thing you can't get, is adequate protection. In other words, adequate protection's a flexible statute, it's got all kinds of things you can give.

The one thing it says, and the Court says, Section 361.3 specifically prohibits awarding a creditor fees under Section 503 as a form of adequate protection.

The one thing that is not adequate protection, many

things are, but one thing that is not, under the statute, is an administrative claim.

That's the one thing Congress says you cannot give as adequate protection. So I thought the Court was -- it was, it was quite perceptive in understanding. I mean, I think that's what Timber says implicitly, but this Court said, that's exactly what the statute says.

You cannot give under adequate protection an administrative claim, which is what fees would be.

Now I think that, you know, we -- if you go back to the briefing, this is very much a question of law. I know Mr. Hansen talked about coming back with all kinds of evidentiary showings. This is a question of law. And the only authority that is cited for the proposition that this group can get paid its fees, is really the honor Your Honor entered in 2004. And I'm not going to go into it in detail, but I think, you know --

THE COURT: I think you made the point well in your submission pointing out to me differences. The one thing that you didn't point out, and that I remember so vividly, is the argument that the payment of professional fees for the two groups of note holders was very much a part of a global resolution of all issues between the parties.

There was a tweaking of those arrangements, as the case went on, but, basically, there was global resolution of all issues. And the idea of disturbing that global resolution

was argued and, frankly, accepted by me in the context of approving what was also a priming situation and so forth.

So there was a substantial difference in the context.

MR. FRIEDMAN: One thing I would point out, though, just maybe this is the right time to mention it. As I said, one of the distinctions was that, in that case, the note holders did have an interest in cash collateral.

With that -- that translates here in an important respect, which is that, even though we're here on a final hearing on a cash collateral order, this provision can be toggled in or out, it has no effect on the debtor's financing. I mean, the bank will accept the outcome of the Court. The bank's not going to alter their view on cash collateral. The debtor's prepared to accept the outcome, either way.

So, you know, a lot of times when somebody had, you know, a debtor by -- you know, has strong leverage over a debtor, and having a lien on cash collateral, obviously, is tremendous leverage, you get things that you might not otherwise get.

But I just don't think this -- this is just not a case where the company's financing in anyway depends one way or the other on the outcome of this particular issue.

Your Honor, I think -- I don't think we have an -- I don't think we need to spend time talking about the Business Judgment Rule, because although that was a fairly large part of

the note holders' submission, they seem to concede that the Business Judgment Rule can't override the Bankruptcy Code.

One thing, though, about O'Brien, which I think, obviously, is dispositive on the issue, not only did O'Brien affirm Judge Gambardella when she held that you have to go through the statutory jurisprudence to get your fees paid, the Court said something today, which I think is important.

The Court said the structure of the Bankruptcy Code further counsels against judicial expansion of the potential for recovery from the debtor's estate. And I think what that tells us, ultimately, I don't think this is -- I don't think this is a close call, but I think if it were, I mean, the Court ought not to be looking for new ways to pay legal fees to people who don't have an obvious right to them.

The Business Judgment Rule, though, it does -- it is important to understand it only in the following context. We all agree in this room, it's not a test, but even O'Brien said, you know, that might be interesting color the Court would want to understand whether, within the statutory rubric it makes sense to grant or deny a motion.

And I would just point out that, you know, there is nothing in this record that in anyway explains how it is good for the estate to pay 2.2 million dollars a quarter.

I mean, there's just nothing that suggests what's good about that. The -- to the extent that the point that

someone would make is, well, by paying that money it encourages bond holder participation.

Now well we -- you know, we saw this morning the 2019, which, you know, I have a few things to say about --

THE COURT: Well let's talk about that. Because there is, after all, a 74 percent representation. Of course, it could change tomorrow. That is though a sizable -- of course, it's routine, and I think we understand that, pre-petition to work with an ad hoc committee like this.

And to achieve, as they did in this case, forbearance agreements and attempts to look at the bigger picture, albeit unsuccessful, in this case.

What is the opportunity post-petition to recognize ad hoc committees, especially when they represent the voting block, if you will?

MR. FRIEDMAN: Your Honor, I think you know, ad hoc committees will continue to exist in bankruptcy. They play, in some cases, potentially in many cases, important functions. But, you know, these holders are multi, multi billion dollar institutions.

I mean, you know, I don't want to -- I mean, I know a lot of them, so I don't want to, you know, give up their own secrets, because I know that -- I know things about them from, you know, from other cases and it's not fair to, you know, especially -- but I can tell you, for example, one, I mean,

Franklin Mutual is a public company.

Franklin Mutual manages, you know, 40 billion dollars. I mean, the notion that they need this Court or this debtor to pay Mr. Hansen's legal fees, or they won't participate, is nonsense.

THE COURT: It's not a question of worrying about them participating or not, it's a question of what their role is and what their entitlement is.

MR. FRIEDMAN: Right.

THE COURT: In the context of representing nearly a billion dollars worth of note holders in this case.

MR. FRIEDMAN: Your Honor, there's no -- there's no notion in the Bankruptcy Code that, you know, that size matters, in terms of your entitlement to get paid. That's -- I mean, people who have large positions tend to congregate, pool their resources and find their way into the Bankruptcy Court.

And, of course, they're entitled to participate and I have every reason to expect that they'll participate.

What is -- what is Mr. Trump's entitlement? He has his name on the door. He spent the better part of the last, you know 10, 15 years, you know, giving -- putting a tremendous effort into this company. He has a license agreement, he has a services agreement.

He has indemnities. He wants very much to save this thing. He feels more personally aligned with these properties

than probably anybody else in the world.

You know what, is his entitlement? We're not asking to have, for the Court to pay our fees. I mean, we have an interest, and when people have an interest in a case, all throughout this country, in all types of cases, they hire lawyers and they appear, and they make their interests known.

And I think that's what the bond holders have done and should continue to do. It's not a function of how big they are. But, you know, what I was just getting at, though, is that this is -- it's lost upon me how this is a good thing for the estate.

If it's a question of their entitlement, they're entitlement is derived from 506(b). If it's a question of what's good for the estate, I don't think there's anything in the record which would explain why it's good for the estate.

Now, look, we have a 2019 statement which is on file. It was filed this morning. That's obviously later than we would have hoped to have seen it. It was promised on February 19th to have been filed shortly. I'm not suggesting this was tactical in nature, but we haven't gotten it until this morning. It is not verified by the holders.

It does not indicate what the holders own. It's just aggregates everybody in particular. It doesn't say what they've held in the past, it doesn't say, as 2019 requires, when do they acquire their claims, how much they pay for their

claims. We don't know whether they're -- they accept any fiduciary obligations to anybody else.

We don't know if they're restricted, we don't know if they're trading. We know that efforts were undertaken at the time of the bankruptcy filing to un-restrict them so that they could trade.

I don't know what they're trading, I doubt Mr. Hansen knows whether they're trading or not. But it raises another question, which is, you know, when you have a lawyer who represents a group of people, and the group of people don't really know what's going on, because they intentionally do not avail themselves of the opportunity to obtain confidential information, so, what kind of instructions are the business people really able to give their professionals, when they don't have access to the kind of information that one would need to make an informed choice?

I mean, these are just, you know, issues that suggest to me that we don't just start writing checks to, what's essentially checks to a law firm -- to two law firms and an investment bank. We're really not paying an ad hoc group. We're paying, you know, as the order provides, two law firms and an investment bank, which the relationship with its clients still is, at least to me, a mystery.

And it is not a small amount of money. I mean, I know it's one percent of the disbursements, as Mr. Hansen

points out.

But with all due respect to Mr. Hansen's clients, the disbursement's are being used to pay the employees, to pay the vendors, to pay the people who keep the properties up and running. Those people, of course, have to get paid. But, you know, for a company that's hovering around, and I have no knowledge specifically as to what the number is now, but if you're hovering around a hundred million dollars of EBITDA down from 300 million dollars, you know, a few years ago, you've lost two-thirds of your EBITDA. You know, you're talking about, you know, 9 million dollars a year, it's just about 10 percent of the company's cash flow, without even getting into capital expenditures.

And so it's not about leverage, I mean, we, and, you know, this is not the time to get into, you know, people's interests, and, what, you know, what their motivations are. These are legal issues about what people's entitlements are.

But the point is that, we know that those 10 million dollars could be used much more profitably for everybody, right now, if they could be kept within the company, if they could be used to revitalize properties that really des -- really need the cash. And there's no source of that cash. There's no DIP in this case. Okay. We're using cash collateral. Money is dried up everywhere.

You don't give away 10 million dollars, you know, up

front, if you don't have to. And there's no reason to do that here.

Now this notion about paying 70 percent or 74 percent now of the class. I think Your Honor hit the nail on the head. We're not at a confirmation hearing, we don't have a prepackaged plan. We don't know what the deal's going to look like. We don't know what anybody's entitlements are. There's a lot of evidence that will need to get into the record, one day, to establish entitlements, if things are not able to be worked out.

But what we're doing right now, is we're paying the legal fees of 74 percent of the holders, that's what we're doing. Now we don't know anything about the other 26 percent of the holders. We don't know if they think that's a good idea, or a bad idea.

We don't know --we certainly don't know that the 74 percent have accepted upon themselves any fiduciary obligation to the other 26 percent. Like with a creditors committee. A creditors committee could consist of, you know, 10 percent of the debt, but they're statutory fiduciaries. And they're vetted by the Department of Justice.

These are hand-picked, you know, holders who don't accept any obligation to anybody. And, you know, the notion that we're going to pay 74 percent of the fees, or pay the fees to 74 percent of the holders, because you can't -- I think the

argument was, well, we can't discriminate against the 26 percent under a plan, because of unfair discrimination.

Completely, you know, turns everything on its head. If you don't want to discriminate, either pay everybody's fees, or pay nobody's fees. But to pay 100 percent of the fees to 74 percent of the holders and zero percent of the fees to the other 26 percent, sounds like the height of unfair discrimination.

So --

THE COURT: If you would wrap up, I do appreciate these arguments, and you've laid them out very, very well in the submissions, as well.

MR. FRIEDMAN: I thank you, Your Honor. I won't belabor the point. I think Your Honor knows, fundamentally, I think these are illegal payments.

They don't come through the back door under adequate protection. And it's not permitted by the Code, and it's also a bad idea because we think the company needs the money. Thank you.

THE COURT: Thank you. Is there any other, before I hear from Mr. Hansen. Yes, Mr. Kulback.

MR. KULBACK: Thank you, Judge. Just briefly. The 17 shareholders join in Mr. Friedman's comments. And I just want to point out a couple matters.

What is clear, is that, as of right now, the value of

these debtors is questionable, whether there's any equity for unsecured creditors whatsoever. And Mr. Hansen apparently wants to avoid an evidentiary hearing, which could be time consuming and expensive to conduct those valuation hearings.

But perhaps that's what's needed before these cases move forward, at this point. We already have a critical vendor motion that's -- order that's been entered, authorizing 18 million dollars out to unsecured creditors.

The debtor now wants to pay the ad hoc note holders committees counsel fees, and spend more money. And what's left is the unsecured creditors at the end of the day that are going to be holding the bag when this case ultimately fails.

Now Mr. Friedman posited that the money could be used better, instead of paying the note holders counsel fees. And I agree. I think that perhaps the money could be used to pay the rest of the unsecured creditors, or create escrows for the unsecured creditors. Ultimately, this proceeding is to move forward for the benefit of creditors.

It's not being done for the benefit necessarily of the debtor, or the note holders committee, the two large constituents, obviously.

But there are other constituents that are completely being ignored in this proceeding, and those are the rest of the unsecured creditors. And so, Your Honor, everything that Mr. Friedman said, at this point, there's no legal basis for the

attorney's fees to be granted to the ad hoc committee.

It doesn't fit within any of the parameters of adequate protection. In fact, as I understand the motion was a motion to use cash collateral. There's nothing here, the note holder hasn't come forward with an application to demand adequate protection for use of the real estate, or any other collateral that they may have.

And it's not -- I don't know that it's actually on or before the Court today as to whether the note holder committee is entitled to anything, other than it being trying to slip it into the first interim cash collateral order. Thank you, Your Honor.

THE COURT: Thank you. Mr. Gibbs.

MR. GIBBS: Good morning Your Honor, Chuck Gibbs, with me my co-counsel. We are here on behalf of the senior secured lenders.

The arguments were eloquent, and the arguments were persuasive. Both sides, the arguments were well taken. I'm here to tell the Court that we support the motion, the request of the bond holders for the payment of their legal fees as adequate protection, as negotiated and contemplated in the order.

I disagree with counsel for Mr. Trump that 506(b) is the showstopper. I don't think the Court needs to hear me spin the same arguments that you've just heard from the other

parties.

I do want the Court to know that we agree with and adopt the arguments Mr. Hansen made on behalf of his clients. We think that is the appropriate legal basis upon which this Court can consider this issue.

And I think the Court shouldn't lose sight of the fact that the major economic constituencies in this case heavily negotiated the terms of the interim cash collateral order, and the proposed final cash collateral order, and we think they're appropriate.

They were properly noticed, and I think that the proffer of testimony, the evidence that you heard from the witness at the interim hearing and the arguments of counsel form a sufficient record for the Court to enter the order, which includes the payment of those fees.

There's one thing that there's no dispute on, and that is that my client has a lien, has the only lien on the "cash." And it's my client's cash that they have a secured interest in. It's going to be spent on a monthly basis to pay the fees of the note holders.

To say that this was done with, you know, a hand in each other's pockets, or a wink, or anything else, is just incorrect. These were heavily negotiated, arms length discussions, including the debtor, that arrived at this draft order.

We will, as I mentioned to the Court at the first hearing, there will be a number of times, I am confident, that the interests of my client and the interests of Mr. Hansen's clients diverge.

I do think, however, that the accommodations that we made that allowed for the consensual use of our client's cash collateral to pay the expenses that are set forth in the budget, including the costs and expenses incurred by the bond holders, is an appropriate negotiated compromise.

It's supported by the Code, that I think they are entitled to adequate protection as an under secured creditor for the diminution in the value of their collateral that might occur during the course of the case. And I don't think it's a requirement that they have to prove that at the end of the case, rather then have it paid on an interim basis.

I think that the provisions that we negotiated for regarding claw backs and disgorgement, are appropriate safeguards in this case.

So we would ask Your Honor to enter the order that we've negotiated, with the modifications that we made to address the U.S. Trustee's concerns.

THE COURT: Thank you, sir. Is there any other position before, Mr. Hansen?

MR. PAGE: Your Honor, Mark Page. Can I speak?

THE COURT: Yes, Mr. Page. Who do you represent?

MR. PAGE: U.S. Bank National Association as indentured trustee in respect of the senior secured note.

THE COURT: All right. What's your position?

MR. PAGE: As the indentured trustee, U.S. Bank represents all of the note holders, including the note holders that aren't members of the ad hoc committee.

In that capacity, U.S. Bank believes that all of the note holders are benefitted by the participation of the ad hoc group in the case. And that to fully realize that benefit, the ad hoc group needs the advice and help of its professionals, and that all parties are benefitted when those professionals are paid current and in the ordinary course.

And I'd also add that, each note holder, in its own capacity, is a secured party that's entitled to request adequate protection. And, again, these -- all the fees are being paid subject to the claw back, so everyone will be protected at the end of the case.

And then, finally, I'll just add that U.S. Bank and the ad hoc group will coordinate their efforts to avoid, as much as possible, any duplication. Thank you, Your Honor.

THE COURT: Thank you. Mr. Hansen, brief reply?

MR. HANSEN: Only if you have questions, Your Honor. We've been at it for quite a while.

THE COURT: We have.

MR. HANSEN: I think we all know the cases.

THE COURT: And I appreciate the arguments very much and I am prepared to rule. I do think this has been an excellent discussion of a difficult issue.

And, indeed, I recognize, at the outset, that this is a negotiated proposal to pay for professional fees. A proposal that was negotiated between the debtor, Beal Bank, whose cash collateral is being used, and the note holders. That it has been properly noticed.

I take note of the 4001 alliance by the note holders to suggest that it is not a procedural hurdle that I'm concerned with, as I approach this issue and feel compelled to deny the opportunity of the note holders to achieve this payment, at this point in the case, in this record.

Indeed, it is certainly preferable, Mr. Hansen is certainly correct, to have a negotiation, an active participation, a focus on the major issues, an active involvement on behalf of the note holders, certainly as with all parties, and everything that the parties can do and the Court can do to facilitate that negotiated process, is to be done.

And that is clear, and it would certainly be my intent to have that approach, as we take on each issue that is presented. But that does not permit me to ignore the clear mandate of the Bankruptcy Code.

And I start, of course, with 506(b). I think that

Mr. Trump is correct to assert that 506(b), if I may borrow Mr. Friedman's language, is the showstopper. From the standpoint that it lays out very clearly, very directly, and in a way that was clearly recognized, as well, by Justice Scalia in the Timbers case, the opportunity only of over secured creditors to achieve post-petition interest, as was the case in the Timbers case. And within the same clause of 506(b), attorney's fees, as are contemplated here.

We don't have a definitive evidential record of what the status of the note holders are in this case. But suffice it to say that, we can whittle -- we can glean from the comments of Mr. Hansen, and assume for these purposes that we are dealing with a set of creditors, the note holders, who have under secured status. That means that they are secured to some extent, beyond the secured position of Beal Bank.

But that the value of the collateral they hold, may not extend fully to support their entire 1.2 billion dollar claim.

If that's the case, then the 506(b) opportunity would not be available to them. And by the same token, it is clear that the burden to establish over secured status would be on the note holders, and that burden has not been met here.

The Timbers case is critical in this analysis. The Timbers case offered -- understood, let me say, that under secured creditors may be entitled to adequate protection. And

Mr. Hansen is certainly correct in his recitation of the context in which the Court was speaking, the fact that the collateral in Timbers was rising in value and there is, at least argument advanced, that that might be the opposite in this case, that there may be a diminution in value.

But I agree with Mr. Trump, that payment of professional fees does not correlate here to adequate protection. There is adequate protection, which may be approved in this case for the note holders, in terms of replacement liens and super priority administrative claim, in the event that there is established a diminution.

But if we understand that 361, which defines adequate protection allows for cash payments or additional security, to the extent of any decline in value, we don't have a record to support the proposition that the payment of professional fees in this case, in the amounts that are contemplated, would comport with, correlate with the potential decline in value of the collateral supporting the note holders position.

363(e) does not provide a sufficient basis to allow this provision of the cash collateral order to go forward. Indeed, 363(e) may -- permits a Court to prohibit, or condition the use, sale or lease of property, as is necessary, and I'm quoting "to provide adequate protection of the interest."

But this -- in evaluating what this means, it's really the same analysis that the Timbers court used to look at

the adequate protection language of 362(d)(1), that there is opportunity only within the context of the Bankruptcy Code.

And the context, the particular Bankruptcy Code provision that controls here is 506(b). There cannot be, notwithstanding the flexibility of the term, that is adequate protection, there cannot be use of that term no matter how flexible, in violation of other Code provisions. In particular, 506(b).

503(b) does not apply here. It may apply, indeed, if the note holders ad hoc committee continues their active participation, succeeds in achieving a resolution, it is easy to see that they might very well be entitled to a substantial contribution award under 503(b).

But that showing has to be made after the fact, not before. Their role pre-petition was perfectly acceptable. Their arrangements with the debtors understandable and necessary, from the standpoint of the need for the debtors to achieve forbearance agreements and to attempt to negotiate a reorganization resolution before the fact. And it is quite common, as Mr. Hansen suggests, to have ad hoc committee participation that has been shown, now, today, by the 2019 statement filed.

That, indeed, a substantial percentage of the note holders is represented by this set of professionals. And, frankly, that's very helpful to the case. But that does not

offer that set of professionals the opportunity to be afforded payment for their professional fees, at this stage.

There is -- we didn't discuss it, but I noted in passing, a citation to Section 1109 in the note holder's submission, to support their contention that professional fees are appropriate.

Of course, that gives them standing to appear and to be heard on all issues, and we welcome and encourage their continued appearance and participation. But that does not support the payment, either. And, indeed, Mr. Friedman correctly recites that the provisions for counsel fees are well set out and limited in the structure of the Code.

We've dealt with the Business Judgment Rule. Indeed, that is very persuasive in many instances. It is not a blank check to overcome specific proposals. The so called precedent for the 2004 case, must be rejected as well. Indeed, I did approve professional fees paid ongoing to ad hoc committees in that case early on, in the context, if I'm not mistaken, of cash collateral arrangements.

But there was significant difference. Number one, by reason of the global resolution, which was maintained pretty much intact throughout the case, on total reorganization.

The case came in with those major blocks of bond holders agreed to specific provisions. They did -- they, the bond holders in that situation, had a security interest in the

debtor's cash collateral, and there was a priming issue in that case, a hundred million dollars of VIP financing, as well an uncertain status about whether they were over secured.

The claw back and disgorgement provisions don't say this, indeed, it could be undone. All they do is provide the opportunity to undo what is not authorized to be done in the first place. And so that is not an appropriate way to look at it. Nor is it that, in other places with this exact scenario, this would be approved.

Certainly, it's hard to say, but I'd pass that argument and must reject it. The support of Beal Bank is understood, but it does not offer the authoritative basis for approving this payment, nor does the position of the U.S. Bank. Indeed, if all are benefitted, as U.S. Bank suggests, again, there is entitlement, there will be entitlement to 503(b) payment for professional fees, and I look forward to that result.

So I will decline to approve that aspect of the cash collateral arrangement. Mr. Lubertazzi?

MR. LUBERTAZZI: Yes, Your Honor. If I can speak to the form of the final order. And I know we have to submit a revised order.

Your Honor, we will submit a revised order which addresses Mr. Sponder's concern that he receive the forecasts.

When I was here the first time, earlier this morning,

Your Honor mentioned about the releases of officers and employees, and we placed on the record that that's solely to the extent in their capacity as agents for the pre-petition secured creditors. We can put that language in the order, Your Honor.

And Your Honor mentioned a moment ago, and I just want to get clarity. There are three types of protection that are being given to Beal Bank and to the note holders. One was the payment of fees, and Your Honor just addressed that. And I went back and I looked at the order, also, Your Honor. It is very specific for, if Beal Bank submits its application to the U.S. Trustee and time to object. But there's also protection for the pre-petition secured creditors, which is the note holders, as well as Beal Bank, for replacement liens and super priority claims. I didn't understand anything Your Honor just said now to alter what's in that form of order.

THE COURT: No, I don't mean to alter that aspect of the arrangement.

MR. LUBERTAZZI: Okay. So what we will do is, we will take the final order and we will circulate it. And we'll eliminate -- we'll make the two modifications that I mentioned a moment ago. And we'll eliminate the provision of fees for the note holder -- the ad hoc committee.

I don't know if Your Honor wants a separate order having to deal with that. And I understand Your Honor's ruling

right now to essentially be to be without prejudice.

So I don't know if you want a separate order for that also, Your Honor.

THE COURT: Perhaps that's helpful. In case it's challenged it might clarify the scenario.

MR. LUBERTAZZI: Okay. Thank you, Your Honor.

(End of requested portion 11:54:00)

(Court adjourned)

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C E R T I F I C A T I O N

I, Josette Jones, court approved transcriber, certify that the foregoing is a correct transcript from the official electronic sound recording of the proceedings in the above-entitled matter.

/s/Josette Jones 04/29/09

JOSETTE JONES DATE

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